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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 230303-0063]

RTID 0648-XC715

Fisheries of the Northeastern United States; Atlantic Spiny Dogfish Fishery; 2023

Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes specifications for the 2023 Atlantic spiny dogfish fishery, as recommended by the Mid-Atlantic and New England Fishery Management Councils.

This action is necessary to establish allowable harvest levels for the spiny dogfish fishery to prevent overfishing while enabling optimum yield, using the best scientific information available. This rule also informs the public of the proposed fishery specifications and provides an opportunity for comment.

DATES: Comments must be received by **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2023-0014, by the following method:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to <https://www.regulations.gov>, and enter “NOAA-NMFS-2023-0014” in the Search box;
2. Click the “Comment” icon, complete the required fields; and
3. Enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). If you are unable to submit your comment through www.regulations.gov, contact Cynthia Ferrio, Fishery Policy Analyst, Cynthia.Ferrio@noaa.gov.

A draft environmental assessment (EA) has been prepared for this action that describes the proposed measures and other considered alternatives, as well as provides an analysis of the impacts of the proposed measures and alternatives. Copies of the specifications document, including the EA, are available on request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. These documents are also accessible via the Internet at <https://www.mafmc.org/action-archive>.

FOR FURTHER INFORMATION CONTACT: Cynthia Ferrio, Fishery Policy Analyst, (978) 281-9180.

SUPPLEMENTARY INFORMATION:

Background

The Mid-Atlantic and New England Fishery Management Councils jointly manage the Atlantic Spiny Dogfish Fishery Management Plan (FMP), with the Mid-Atlantic Council acting as the administrative lead. Additionally, the Atlantic States Marine Fisheries Commission manages the spiny dogfish fishery in state waters from Maine to North Carolina through an interstate fishery management plan. The Federal FMP requires the specification of an acceptable biological catch (ABC), annual catch limit (ACL), annual catch target (ACT), total allowable landings (TAL), and a coastwide commercial quota. These limits and other related management measures may be set for up to five fishing years at a time, with each fishing year running from May 1 through April 30. This action proposes Atlantic spiny dogfish specifications for fishing year 2023, as recommended by the Councils and Commission.

In September 2022, the Mid-Atlantic Council's Scientific and Statistical Committee (SSC) reviewed a spiny dogfish 2022 data update with the best available catch and biomass estimates, including the Northeast Fisheries Science Center's spring trawl surveys. In response to declining trends in stock biomass and productivity shown in the data, the SSC recommended a 7,788 mt ABC for fishing year 2023, which is a 55-percent decrease from fishing year 2022. Both the Mid-Atlantic and New England Councils accepted the SSC's recommended ABC at their subsequent meetings in October and December 2022, respectively. The Councils also considered the inclusion of a

management uncertainty buffer to account for potentially underestimated commercial discards. Buffers of 0, 5, 13, and 18 percent were considered; however, both Councils ultimately recommended adopting the SSC’s recommended ABC of 7,788 mt, with no additional management uncertainty buffer, resulting in a coast-wide commercial quota of 5,449 mt; a 59-percent decrease from 2022. Neither Council recommended any changes to other management measures, such as trip limits.

Proposed Specifications

This action proposes the Councils’ recommendations for 2023 Atlantic spiny dogfish catch specifications, which are consistent with the Mid-Atlantic SSC’s recommended ABC and the best available science. These proposed specifications would decrease all catch limits by at least 55 percent in fishing year 2023, based on recent declining trends in stock biomass and productivity. A comparison of the current 2022 and proposed 2023 specifications is summarized below in Table 1.

Table 1 – Comparison of Current 2022 and Proposed 2023 Atlantic Spiny Dogfish Fishery Specifications

	2022 (Current)		2023 (Proposed)		Percent Change
	Million lb	Metric tons	Million lb	Metric tons	
ABC	38.58	17,498	17.17	7,788	55
ACL = ACT	38.48	17,453	17.09	7,751	56
TAL	29.68	13,461	12.48	5,663	58
Commercial Quota	29.56	13,408	12.01	5,449	59

The Councils did not recommend changes to any other management measures as a part of these specifications. Therefore, all other management measures, including trip limits, would remain unchanged for fishing year 2023.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Atlantic Spiny Dogfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

NMFS finds that a 15-day comment period for this action provides a reasonable opportunity for public participation in this action pursuant to Administrative Procedure Act section 553(c) (5 U.S.C 553(c)), while also ensuring that the final specifications are in place for the start of the spiny dogfish fishing year on May 1, 2023. Stakeholder and industry groups have been involved with the development of this action and have participated in public meetings throughout the past year. A prolonged comment period and subsequent potential delay in implementation past the start of the 2023 fishing year would be contrary to the public interest, as it could create confusion both in the spiny dogfish industry around current quotas, and with state agencies as they prepare their annual management measures.

This action is exempt from review under Executive Order 12866 because it contains no implementing regulations.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows.

The Councils conducted an evaluation of the potential socioeconomic impacts of the proposed specifications in conjunction with an EA. There are no proposed regulatory

changes in this spiny dogfish action, so none are considered in the evaluation. The proposed specifications would decrease the 2023 ABC by 55 percent, and the coastwide commercial quota by 59 percent, consistent with the Mid-Atlantic Council's SSC's recommendations in response to recent declines in stock biomass and productivity. This action proposes no changes to other management measures beyond specifications, such as trip limits.

This proposed action would affect those entities that hold Federal commercial fishing permits for Atlantic spiny dogfish. Vessels may hold multiple fishing permits and some entities own multiple vessels and/or permits. According to the Northeast Fisheries Science Center commercial ownership database, 1,785 separate vessels held commercial spiny dogfish permits in 2021, the most recent year of fully available data. A total of 1,126 commercial entities owned those permitted vessels, and of those entities, 1,115 are categorized as small entities and 11 as large entities.

Although 59 percent is a substantial quota reduction, this change is not expected to substantially change overall fishing activity, or result in catch overages or revenue losses in the spiny dogfish fishery. In recent years, the spiny dogfish quotas have not constrained landings in the fishery. Even with the 59-percent decrease, the proposed coastwide commercial quota of 12 million lb (5,449 mt) is higher than the most recent, complete fishing year (2021) landings of 10.3 million lb (4,672 mt), and is therefore not constraining. The average landings of the last three years (2019-2021; 14.1 million lb, 6,396 mt) is slightly higher than the proposed quota; however, the fishery has been following a declining landings trajectory in recent years and it is reasonable to expect that the new quota will not be limiting or substantially affect effort. Additionally, effort in the

Atlantic spiny dogfish fishery remains largely dependent on market conditions and pricing, which are not expected to substantially change as a result of these specifications. As such, this proposed action is not expected to have a substantial impact on the way the fishery operates or the revenue of small entities.

Overall, analyses indicate that the proposed specifications are not expected to substantially change fishing effort or the risk of overfishing, prices/revenues, or fishery behavior. Therefore, the Council concluded, and NMFS agrees, that this action would not have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This action would not establish any new reporting or record-keeping requirements.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

(Authority: 16 U.S.C. 1801 *et seq.*)

Dated: March 3, 2023.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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